

**2.4: DEVELOPMENT APPLICATION - SINGLE HOUSE (POLICY RELAXATION) – LOT 201 (73A) FESTING STREET, MOUNT MELVILLE**

<b>Land Description</b>	: 73A Festing Street, Mount Melville.
<b>Proponent</b>	: CJ & VM Williams
<b>Owner</b>	: CJ & VM Williams
<b>Business Entity Name</b>	: N/A
<b>Attachments</b>	: Copies of development application; submissions received and schedule of submissions; Albany Historic Town Design Policy; Copies of relevant sections of R-Codes referred to in report.
<b>Appendices</b>	: N/A
<b>Councillor Workstation</b>	: N/A
<b>Responsible Officer(s)</b>	: Dale Putland, Executive Director Planning & Development Services

**Maps and Diagrams:**



*(Subject lot - 73A Festing Street highlighted)*

**IN BRIEF**

- The proposal is for a single house on a Residential zoned lot, within the area subject to the Albany Historic Town Design Policy (the Policy).
- The proposed design requires relaxation of the Policy with regard to height; parapet wall on boundary and retaining at side boundaries.
- Strong objection has been received from the neighbours and the direction of Council is sought.
- Councils decision has been requested due to the degree of community concern over the relaxation of the Policy and the neighbours' objections to the relaxation of the R-Codes.

**RECOMMENDATION**

**ITEM 2.4: RESPONSIBLE OFFICER RECOMMENDATION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT Council ISSUE a Notice of Planning Scheme Consent for Single House at 73A Festing Street, Mount Melville subject to the following conditions:**

- i. **Stormwater disposal plans, details and calculations shall be submitted for approval, implemented and constructed to the satisfaction of the City of Albany.**  
*Advice:*
  - *Stormwater disposal is to be designed in accordance with the 'City of Albany's Subdivision and Development Guidelines';*
  - *The stormwater disposal system is to be designed and certified by a practicing Civil Engineer to the satisfaction of the City of Albany.*
- ii. **The new crossover(s) shall be constructed to the specifications, levels and satisfaction of the City of Albany.**  
*Advice:*
  - *A 'Permit for Vehicle Crossover Construction' from the City of Albany is required prior to any work being carried out within the road reserve, which shall be in accordance with drawing nos. 97024 1/3 – 97024 3/3 (refer to the City of Albany's Subdivision and Development Guidelines).*
- iii. **A vehicular access plan shall be submitted for approval, implemented and constructed to the satisfaction of the City of Albany.**  
*Advice:*
  - *Access is to be designed in accordance with the Australian Standard 2890 (including maximum grade requirements).*
  - *Vehicles leaving the property must be able to leave in forward gear.*
- iv. **No drainage / stormwater runoff is permitted into the rail corridor.**
- v. **Fencing to be installed and maintained on rail corridor boundary.**  
*Advice:*
  - *Any fence installed on the rail boundary should be in keeping with others in the area and to the satisfaction of the City of Albany.*
- vi. **The glazed wall area shown on the 'East Elevation' on the approved plans is to**

**be constructed of obscure glass or obscure glass bricks. Louvres will be permitted if installed at a height of 1.6m above the finished floor level. Plans showing these amendments to be submitted for approval to the satisfaction of the City of Albany.**

## **ALTERNATIVE RECOMMENDATION 2**

- vi. The glazed wall area shown on the 'East Elevation' on the approved plans is to be constructed of obscure glass or obscure glass bricks. Louvres will be permitted if installed at a height of 1.6m above the finished floor level. The whole of the Eastern wall is to be setback 3.8m. Plans showing these amendments are to be submitted for approval to the satisfaction of the City of Albany.**

## **BACKGROUND**

1. An application for planning scheme consent was lodged with the City of Albany on 27 April 2012 for the development which is the subject of this report. At the time of lodgement, the neighbours had been consulted and had stated their strong objection to the design submitted.
2. The proposal required relaxation of Council Policy, 'Albany Historic Town Design Policy', as well as relaxation of several elements of the Residential Design Codes of Western Australia (R-Codes).
3. Planning staff were concerned over the degree of relaxation of the Albany Historic Town Design Policy that would have been required.
4. The applicant was subsequently contacted and advised of planning staff concerns and the objections received. Following negotiation and several changes to the original proposal, amended plans were submitted in an attempt to address these issues.
5. Consultation again took place, not only with the adjacent neighbours but also with other landowners fronting Festing Street; in total, twenty four landowners were consulted.
6. Three submissions were received objecting to the amended proposal, including submissions from the two adjacent landowners.
7. The staff recommendation is to approve the proposal with conditions to address the neighbours' concerns.
8. Councils decision has been requested due to the degree of community concern over the relaxation of the Policy and the neighbours' objections to the relaxation of the R-Codes.

## **DISCUSSION**

9. The subject lot is 598.8m<sup>2</sup> and is zoned Residential R20 within Town Planning Scheme 1A.
10. Entry to this lot is via a Service Road off Festing Street.
11. The lot was created following subdivision which was approved in 2007; the final plan being endorsed in 2009.

12. The configuration of the lot is quite unusual in that it has a very narrow frontage of 7m creating a sloping entry for a distance of 7m, which then widens to 11m at a level retained area approximately 12.5m in length, before dropping 3m and widening to 15.8m for the rest of the steeply sloping lot. The rear boundary abuts a rail reserve.
13. The proposed dwelling has been designed to meet the challenges of the site, within the constraints of the Albany Historic Town Design Policy and the R-Codes as much as possible.
14. The final amended plans still require some relaxations of both the Policy and the R-Codes, as follows:

<b>Albany Historic Town Design Policy</b>		
<b>Clause/Element</b>	<b>Variation Requested</b>	<b>Comment/Justification</b>
<p>B2.7 Street Setbacks</p> <p><i>4) All garages...shall be located at least 1 metre behind the front wall of a dwelling and wherever possible at the rear...This...may be relaxed where the topography makes compliance impractical.</i></p>	<p>Garage is located in front of the house.</p>	<p>May be relaxed as per policy with the justification that the narrow entry to the lot and the finished levels on the lot do not allow for a garage to be located behind the dwelling front wall and still enable safe access. Rear access is not available to this lot.</p>
<p>B2.9 Side Setbacks</p> <p><i>1) Side setbacks shall be determined as per Clause 3.3.1 of the R-Codes except that an absolute minimum side setback of 1.0 metre shall apply. No parapet walls will be permitted.</i></p>	<p>A parapet wall on the western boundary. This is the side wall to the upper level garage and lower level studio.</p>	<p><i>(See below for R-Codes assessment of side setbacks.)</i></p> <p>Parapet wall needs approval of Council as there is no discretion in the policy to vary this.</p> <p>The purpose of eliminating parapet walls is to maintain a view corridor and separation between the properties.</p> <p>The parapet wall is to be located adjacent to an existing shed on the neighbouring lot (No 75) which is built up to the boundary – the parapet wall in this location will mean less visual impact on the neighbours at No 75. There is further separation of approx between that shed and the neighbouring dwelling.</p> <p>The setback on the opposite boundary (east) is more open and the view corridor has been purposely maintained here (see photo montage attached).</p> <p>It is considered that the view from the street in this situation is not unduly affected as the house will appear as a single level dwelling at the service road level and at Festing Street road level the view is over and above the proposed house.</p>
<p>B2.11 Retaining walls</p> <p><i>2) Where the slope of a site</i></p>	<p>Some new retaining at boundaries – retaining walls to be stepped to a</p>	<p>This site is particularly steep and as the bulk of the fill on the lot is contained within the footprint of the building, the proposed fill on</p>

<p><i>requires a floor level to be higher than the ground level, walls should be taken down to ground level (to retain the building within its footprint rather than at side boundaries).</i></p>	<p>maximum of 1.5m but mostly not over 1m.</p>	<p>the boundary is considered minimal. The stepping of the retaining walls retains the impression of the natural slope of the site.</p>
<p>B2.15 Number of building storeys</p> <p><i>Acceptable heights to eaves 5m Acceptable heights to gable 8m</i></p>	<p>Wall height proposed is over policy height by up to 2.8m for most of the building.</p> <p>Overall height of the dwelling varies with the slope of the land from well under the Policy maximum at 3.6m to 9.5m which is 1.5m over maximum policy height.</p>	<p>The Policy allows for consideration of building heights in excess of the acceptable criteria if the following is achieved. Comment noted below each point:</p> <ol style="list-style-type: none"> <li>1) <i>The street facade of the building is articulated, whereby two storey development does not represent as a continuous solid external facade;</i> <b>Development presents as single storey from street.</b></li> <li>2) <i>A streetscape plan being submitted, using accurate photomontage images, 3D modelling or detailed elevations showing the bulk and scale of the development in context with the form of adjacent buildings within the street...</i> <b>Provided and attached.</b></li> <li>3) <i>The proponent can justify that the development complies with provisions dealing with 'Bulk and Scale' ...of (the) Policy</i> <b>Proposed residence is not out of scale with existing residences when viewed from street.</b> <b>Although the new residence is of a larger scale than No 75, it is of a similar height to that of No 73.</b></li> </ol> <p><i>in addition to meeting the performance criteria (6.7.1 – P1) of the (R-Codes);</i> <b><i>i.e. Building height consistent with the desired height of buildings in the locality and recognises the need to protect the amenities of adjoining properties, including: adequate direct sun to building and open spaces; adequate daylight to major openings to habitable rooms; and access to views of significance</i></b></p> <p><b>It is noted that overshadowing is not an issue due to the north south alignment of the lot and dwelling.</b></p> <p><b>The neighbours' views would be diminished by any development on the lot. Some effort has been made to angle the rear of the upper level</b></p>

		<p><b>on the Western boundary to leave a view corridor for No 75. There are still significant views to be enjoyed by both adjacent neighbours.</b></p> <p><i>And</i></p> <p>4) <i>The proposal has been referred to adjacent properties for comment... The neighbours have been consulted and do object; hence Council's determination is requested.</i></p> <p><b>The overall height of the building is generally under the 8m maximum. The rear portion for approx 8m is over the policy maximum by up to 1.5m.</b></p> <p><b>The walls are over height for the majority of the building however the combination of different building materials, articulation and build up at rear on posts all aid in the reduction of the appearance of bulk.</b></p> <p><b>It is considered that the overall height would have the greatest impact on views and this has been kept to a minimum.</b></p>
--	--	--

**Residential Design Codes**

Clause/Element	Variation Requested	Comment/Justification
<p><b>6.3.1 Buildings setback from the boundary</b> Objective of this element is: <i>To ensure adequate provision of direct sun and ventilation for buildings and to ameliorate the impacts of building bulk, interference with privacy, and overshadowing on adjoining properties.</i></p>	<p>Side setback of eastern wall should be 5m. This setback is calculated on the length of the wall with major openings. The setback proposed is at 2.85m for most of the wall with a 4m cantilevered section (this is the kitchen and there are no windows facing the boundary) setback at 2m.</p>	<p>Generally meets objective.</p> <p>The neighbour has strong objection to this relaxation. The proposal does not meet the acceptable development criteria and is assessed against the objective of this element and the '<b>Performance criteria</b>' of the R-Codes, as follows (with comment below each point):</p> <p><i>Buildings setback from boundaries...to:</i></p> <ul style="list-style-type: none"> <li>• <i>Provide adequate direct sun and ventilation to the building;</i></li> </ul> <p><b>Complies</b></p> <ul style="list-style-type: none"> <li>• <i>Ensure adequate direct sun and ventilation...to adjoining properties;</i></li> </ul> <p><b>The proposal does not overshadow No 73 as shown in diagram for calculation of shadow at mid winter (attached). Some afternoon shadow may be cast over the rear of No 73 and it is considered that ventilation should not be affected as the</b></p>

		<p><b>subject wall is in alignment with the rear garden of the lot rather than the house.</b></p> <ul style="list-style-type: none"> <li>• <i>Provide adequate direct sun to the building and ...open spaces;</i></li> </ul> <p><b>Complies</b></p> <ul style="list-style-type: none"> <li>• <i>Assist with protection of access to direct sun for adjoining properties;</i></li> </ul> <p><b>As per above reference to overshadowing</b></p> <ul style="list-style-type: none"> <li>• <i>Assist in ameliorating the impacts of building bulk on adjoining properties; and assist in protecting privacy between adjoining properties.</i></li> </ul> <p><b>The wall is to be constructed of a variety of materials including glass and is articulated to reduce the impact of bulk.</b></p> <p>If the glazed panel within this wall is constructed of opaque glass with high level louvers, resulting in only one major opening (upper level living area) the setback required would be 3.8m, requiring relaxation between 0.95m (for majority of the wall) and 1.8m for the cantilevered section.</p>
<p><b>6.8.1 Visual Privacy</b></p> <p><i>Major openings and unenclosed ...balconies...more than 0.5m above natural ground level, to be setback as follows...from the boundary:</i></p> <p>Habitable rooms setback 6m</p> <p>Balconies/decks 7.5m</p>	<p>As above, eastern wall has major openings on the upper level and cone of vision extends over Lot 73 into the back garden area, adjacent to their outdoor living area.</p> <p>The western boundary wall incorporates a deck which overlooks a small portion of the back garden of No 75.</p> <p>The eastern boundary wall, lower level deck overlooks an area of the rear garden.</p>	<p><i>(Refer to diagram below – each area is labelled to correspond with comments below)</i></p> <p><b>(A)</b> As per the above suggestion to reduce the number of major openings, the effect of replacing the glazing with opaque glass would also eliminate the 6m setback required for visual privacy and be a direct response to the neighbour's objection.</p> <p>The overlooking from the upper and lower decks will be to an area of the rear gardens of both neighbours and is considered to be minor in nature.</p> <p><b>(B)</b> The cone of vision includes an area up to 4.5m in from the boundary at No 75, extending towards the rear of the lot.</p> <p><b>(C)</b> The cone of vision extends into the rear of No 73 for 3.5m covering a small area towards the rear of the lot, adjacent to the rail reserve.</p>



**Areas where Cone of Vision extends into neighbouring lots**

### **GOVERNMENT CONSULTATION**

15. As the subject lot abuts a Rail Reserve, the Public Transport Authority and the rail provider 'Brookfield Rail' were consulted for comment. They had no objection to the proposal but did request some standard conditions be applied to an approval. These have been included in the officer's recommendation at conditions (iv) and (v).

### **PUBLIC CONSULTATION / ENGAGEMENT**

16. The neighbouring landowners were contacted for comment as per the requirements of the R-Codes for relaxations to that State policy; and also as per the requirements of Council's Guideline document "Planning Applications".
17. A total of 24 landowners were consulted, of which 3 objected. A summary of the submissions received is attached to this report.

### **STATUTORY IMPLICATIONS**

18. City of Albany Town Planning Scheme 1A gives Council the discretion to vary policy requirements to the degree stated in the following clause:

*7.21.4 A Town Planning Scheme policy shall not bind the Council in respect of any application for planning consent but the Council shall take into account the provisions of the policy and objectives which the policy was designed to achieve before making its decision.*



**STRATEGIC IMPLICATIONS**

19. This item relates directly to the following elements of the City of Albany Strategic Plan (2011-2021):

**Key focus Area**

*Organisational Performance*

**Community Priority**

*Policy and Procedures*

**Proposed Strategies**

*Develop clear processes and policies and ensure consistent, transparent application across the organisation.*

**POLICY IMPLICATIONS**

20. The Albany Historic Town Design Policy is the policy that this proposal must be assessed under. The clauses of the policy requiring relaxation are detailed at point 13 of this report.

**RISK IDENTIFICATION & MITIGATION**

21. The risk identification and categorisation relies on the City's Risk Management Framework.

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Analysis</b>	<b>Mitigation</b>
<i>Should Council decide not to follow the recommendation and refuse the proposal, the proponent may lodge an application for review to the State Administrative Tribunal.</i>	<i>Likely</i>	<i>Insignificant</i>	<i>Low</i>	<i>The recommendation is based on sound planning grounds and Council would have to justify its decision.</i>
<i>Relaxation of the policy requirements may set a precedent that could cause development to be approved in the future that does not meet the objectives of the policy.</i>	<i>Possible</i>	<i>Insignificant</i>	<i>Lot</i>	<i>The recommendation is based on sound planning grounds and Council would have to justify its decision.</i>

**FINANCIAL IMPLICATIONS**

22. The appropriate planning fee has been paid by the proponent and planning staff have processed the proposal within existing budget lines.

**LEGAL IMPLICATIONS**

23. Should Council not follow the recommendation and refuse the development the proponent has the ability to seek review of Council's decision at the State Administrative Tribunal. Such an appeal would be a Class 1 appeal which does not involve legal representation, and therefore such costs would be mainly staff time.

**ALTERNATE OPTIONS**

- 24. Clause (vi) of the officer recommendation meets the 'performance criteria' of the R-Codes. If refused, the applicant could appeal the decision at the State Administrative Tribunal (SAT).
- 25. The alternative recommendation 2 meets the 'acceptable development criteria' of the R-Codes, however would necessitate a re-design which the applicant may not find acceptable and may then also appeal at SAT.

**SUMMARY CONCLUSION**

- 26. The development proposal requires relaxation of Council policy in four areas. It is considered by staff that the building height is the area of the policy that will have the most impact on the neighbours', however, these impacts have been assessed by staff and can be justified to be in accordance with the performance criteria of the policy (*i.e. Clause B2.15 Number of Building Storeys*).
- 27. On the whole the proposed development meets the Acceptable Development criteria of the R-Codes with a few elements relying on the Performance Criteria. These are generally met with the addition of the change recommended in clause (vi) of the officers recommendation.
- 28. The proposal offers a solution to the challenges that the lots configuration and topography present and with the conditions proposed is considered acceptable and is recommended for approval.

<b>Consulted References</b>	:	City of Albany Town Planning Scheme 1A
<b>File Number (Name of Ward)</b>	:	A215770 (Breaksea Ward)
<b>Previous Reference</b>	:	N/A